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Attorneys for Defendant Local
Lighthouse Corp.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOOGLE INC., a Delaware corporation,

Plaintiff,

v.

LOCAL LIGHTHOUSE CORP., a California
corporation,

Defendant.

Case No. 3:15-cv-04219-HSG

JOINT CASE MANAGEMENT

STATEMENT & [PROPOSED] ORDER

JUDGE: HON. HAYWOOD S. GILLIAM, JR.

DATE: DECEMBER 22, 2015

TIME: 2:00 PM

COURTROOM: 15

TRIAL DATE: NOT YET SET

Plaintiff Google Inc. (“Plaintiff” or “Google”) and Defendant Local Lighthouse Corp. (“Defendant” or “Local Lighthouse”) (collectively, the “Parties”), together by and through their respective counsel, hereby submit this Joint Case Management Statement and Proposed Order

pursuant to Civil Local Rule 16-9 and the Standing Order for All Judges of the Northern District of California dated November 1, 2014.

1. Jurisdiction & Service

The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. There are currently no disputed issues regarding personal jurisdiction or venue in this matter, and service is complete.

2. Facts

Plaintiff's Statement of the Facts

Google is a well-known provider of search engine, advertising, web application, and social networking services offered under the GOOGLE trademark or marks including or incorporating GOOGLE (e.g., GOOGLE+, GOOGLE PLACES, GOOGLE MAPS) (collectively, the "GOOGLE Marks"). Defendant is a search engine marketing ("SEM") company that assists businesses in managing their online accounts with Google and other search engines. Defendant also offers services that aim to improve the placement of its customers' websites and business listings in search engine results, including GOOGLE search ("search engine optimization" or "SEO" services). Defendant markets and sells its services primarily via telephone calls to prospective customers throughout the United States. Defendant's employees make reference to Google, the GOOGLE Marks, and the products and services offered thereunder during such marketing and sales calls.

Google alleges that the manner in which Defendant uses the GOOGLE Marks and the statements that it makes regarding Google and Google's products and services are false, misleading, and likely to confuse consumers regarding the relationship between the Parties and the true source and nature of the Parties' respective products and services. Specifically, Google alleges that Defendant's false and misleading statements include: (i) statements that Defendant's sales agents represent Google or are calling on behalf of Google; (ii) statements that Defendant is affiliated with Google or has been contracted by Google to provide SEO services; (iii) other statements designed to obfuscate Defendant's identity and foster the mistaken belief that Defendant's sales agents are calling on behalf of Google or that Defendant and its services are

1 approved, sponsored, or endorsed by Google; and (iv) false and misleading statements regarding
 2 the nature and characteristics of the Parties' respective products and services, including that
 3 Defendant is able to guarantee that its customers' web pages will appear on the first page of
 4 organic GOOGLE search results.

5 Google contacted Defendant regarding consumer complaints Google received about
 6 Defendant's sales and marketing practices prior to initiating this lawsuit. Google alleges that
 7 Defendant did not cease the infringing and misleading conduct at issue despite these
 8 communications. Google filed a complaint against Defendant in this Court on September 16,
 9 2015. Defendant filed an answer and affirmative defenses on October 8, 2015.

10 Defendant's Response

11 Defendant denies the foregoing allegations and argues that its use of the GOOGLE Marks
 12 constitutes fair use.

13 **3. Legal Issues**

14 This case involves the following legal issues:

- 15 a) Whether Defendant's use of Google's registered trademarks constitutes trademark
 16 infringement under 15 U.S.C. § 1114;
- 17 b) Whether Defendant's use of Google's trademarks constitutes unfair competition
 18 and false designation of origin under 15 U.S.C. § 1125(a);
- 19 c) Whether Defendant's statements regarding Google, Google's products and
 20 services, Defendant, and Defendant's products and services constitute false advertising
 21 under 15 U.S.C. § 1125(a); and
- 22 d) Whether Google is entitled to injunctive relief and attorneys' fees and costs under
 23 15 U.S.C. §§ 1116, 1117 and/or such other remedies as the Court deems just and
 24 equitable.

25 **4. Motions**

26 There are no prior or pending motions in this matter. Google anticipates that it will move
 27 for summary judgment in this action.

1 **5. Amendment of Pleadings**

2 The Parties agree to a deadline of January 28, 2016 for amending their pleadings without
3 leave from the Court.

4 **Plaintiff's Statement**

5 Google anticipates that it may seek to add defendants should discovery reveal additional
6 entities operating in concert with or on behalf of Defendant. Google does not anticipate adding
7 additional claims to its Complaint at this time.

8 **Defendant's Statement**

9 Local Lighthouse does not anticipate amending its Answer.

10 **6. Evidence Preservation**

11 The Parties confirm that they have reviewed the Guidelines Relating to the Discovery of
12 Electronically Stored Information and have met and conferred pursuant to Federal Rule of Civil
13 Procedure 26(f) regarding reasonable and proportionate steps to preserve evidence relevant to the
14 issues reasonably evident in this action. The Parties pledge that they will continue this discussion
15 as needed. Google has requested that Local Lighthouse preserve, among other electronically-
16 stored information ("ESI"), recordings and voicemails consisting of or pertaining to the sales calls
17 which are at issue in this matter.

18 **7. Disclosures**

19 The Parties exchanged the initial disclosures required by Federal Rule of Civil Procedure
20 26(a)(1) on December 7, 2015. The Parties reserve the right to supplement such disclosures as
21 necessary.

22 **8. Discovery**

23 **Scope of Discovery**

24 The Parties agree that the subject matters open to discovery should not be limited other
25 than as provided for by Federal Rule of Civil Procedure 26(b)(1). The Parties do not propose any
26 modifications or limitations to the discovery rules. The Parties do not believe there is any need
27 for discovery to be conducted in phases.

28

1 The Parties each reserve all right to seek discovery on subjects not listed below and to
 2 object at a later date to discovery taken on any subjects listed below. Subject to the foregoing
 3 reservation of rights, at present, Google anticipates that discovery in this case will be needed on
 4 the following topics:

- 5 a) Defendant's use of Google's trademarks in connection with selling, marketing,
 6 advertising, or promoting Defendant's products and services;
- 7 b) Any instances of confusion, mistake, deception, or association of any kind
 8 between Defendant or Defendant's products or services and Google, the GOOGLE Marks,
 9 or Google's products or services;
- 10 c) Statements, representations, or descriptions of Defendant's products and services
 11 and Google's products and services made by Defendant or anyone selling, marketing,
 12 advertising, or promoting Defendant's products and services on its behalf;
- 13 d) Defendant's training, supervision, and quality assurance monitoring of employees
 14 or other parties selling, marketing, advertising, or promoting Defendant's products and
 15 services on its behalf;
- 16 e) Communications between Defendant and its customers or potential customers
 17 about Defendant and Defendant's products and services as they relate to Google and
 18 Google's products and services;
- 19 f) Communications between Defendant and consumer regulatory or consumer
 20 watchdog agencies regarding Defendant's sales, marketing, advertising, or promotional
 21 practices;
- 22 g) Communications between Defendant and Google;
- 23 h) Information regarding Defendant's revenues and refunds for Defendant's SEO or
 24 other services in connection with which Defendant has used the GOOGLE Marks or
 25 otherwise referenced Google or its products or services; and
- 26 i) The identities of the persons and corporate entities responsible for, and most
 27 familiar with, the foregoing.

28 In addition, Local Lighthouse anticipates taking discovery relating to Google's

1 contentions, and regarding Local Lighthouse's defenses, including fair use.

2 Discovery to Date

3 Google served its First Set of Requests for the Production of Documents and Things and
4 its First Set of Interrogatories on Defendant on December 3, 2015. Local Lighthouse has not
5 served any discovery requests on Google.

6 Protective Order and Privilege Log

7 The Parties anticipate that discovery in this case will involve material that is considered
8 confidential and proprietary and anticipate jointly submitting a proposed protective order to the
9 Court to govern the exchange and use of confidential or otherwise proprietary information. The
10 Parties are in the process of negotiating the terms of the protective order. The Parties anticipate
11 that the protective order will include a "claw back" order under Federal Rule of Evidence 502(d)
12 providing for the return of privileged documents without waiver of the attorney-client privilege or
13 work product protection.

14 The Parties agree that if any documents are withheld from production on the basis that the
15 documents are subject to the attorney-client privilege, work product doctrine, or any other
16 applicable privilege, the withholding party shall produce a privilege log in accordance with the
17 Federal Rules of Civil Procedure.

18 ESI Protocol

19 The Parties will attempt to enter into a protocol governing the production of ESI. The
20 Parties are in the process of negotiating the terms of the protocol.

21 **9. Class Actions**

22 Not applicable.

23 **10. Related Cases**

24 There are no related cases within the meaning of Civil Local Rule 3-12(a) pending before
25 another judge of this Court or before another court or administrative body.

1 **11. Relief**

2 Google has requested that the Court enjoin Defendant (and all of its officers, agents,
3 servants, representatives, employees, attorneys, parent and subsidiary corporations, assigns and
4 successors in interest, and all other persons acting in concert with it) from:

- 5 a) Using the GOOGLE Marks in connection with the marketing, promotion,
6 advertising, sale, or distribution of any of Defendant's products and services (except as
7 reasonably necessary to identify Google's own products and services);
- 8 b) Using any false designation of origin or any false description that can, or is likely
9 to, mislead the public, or individual members thereof, to believe that any product or
10 service distributed, sold, offered for sale, or advertised by Defendant is in any manner
11 associated with or approved or sponsored by Google;
- 12 c) Representing in any manner that Defendant is a "Google Partner" or is otherwise
13 endorsed, certified, or sponsored by Google; and
- 14 d) Committing any other infringing or misleading acts that may be discovered during
15 the course of this action.

16 Google reserves the right to modify or add to the foregoing request for injunctive relief to
17 describe particular misleading and/or infringing acts that may be discovered during this action.

18 In addition to the injunctive relief described above, Google seeks attorneys' fees and costs
19 pursuant to 15 U.S.C. § 1117(a). Google also seeks such other relief as the Court may deem just
20 and equitable.

21 **12. Settlement and ADR**

22 The Parties have discussed prospects for settlement.

23 This case has been assigned to the ADR Multi-Option Program. The Parties have met and
24 conferred as required by ADR Local Rule 3-5 to discuss ADR options. Pursuant to that
25 conference, the Parties filed a Notice of Need for an ADR Phone Conference to request an early
26 settlement conference with a Magistrate Judge, which was held on December 14, 2015. Mr.
27 Herman, ADR Program Director, will make a recommendation to the Court.

28

1 **13. Consent to Magistrate Judge For All Purposes**

2 The Parties do not consent to proceed before a Magistrate Judge for all purposes.

3 **14. Other References**

4 The Parties do not believe that this case is suitable for reference to binding arbitration, a
5 special master, or the Judicial Panel on Multidistrict Litigation.

6 **15. Narrowing of Issues**

7 The Parties shall discuss stipulations to narrow the issues presented for summary
8 judgment and/or trial. At this time, however, the Parties have not agreed on any such stipulations.

9 **16. Expedited Trial Procedure**

10 The Parties do not believe that this case is suitable for handling under the Expedited Trial
11 Procedure of General Order No. 64 Attachment A.

12 **17. Scheduling**

13 The Parties jointly propose the following schedule:

- 14 a) Affirmative Expert Reports Due: May 26, 2016
15 b) Rebuttal Expert Reports Due: June 29, 2016
16 c) Close of Discovery: August 4, 2016
17 d) Dispositive Motions Due: September 1, 2016
18 e) Hearing on Dispositive Motions October 6, 2016
19 f) Final Joint Pretrial Conference: 60 days following the Court's decision on
20 dispositive motions
21 g) Trial (4-6 days): As set by the Court

22 **18. Trial**

23 The Parties anticipate that trial will take between four (4) and six (6) days. The Parties
24 request that this case be tried by a jury.

25 **19. Disclosure of Non-party Interested Entities or Persons**

26 The Parties have each filed the "Certification of Interested Entities or Persons" required
27 by Civil Local Rule 3-15. Additionally, Google filed a supplement to its initial Certification on
28 October 9, 2015 with the below disclosure.

Plaintiff's Statement

Google certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in the subject matter or in a party that could be substantially affected by the outcome of the proceeding:

1. Alphabet Inc., Holding Company of Plaintiff
2. Google Inc., Plaintiff

Defendant's Statement

Local Lighthouse certifies that it has no parent corporation, that no publicly held corporation owns 10% or more of its stock, and that there are no other interests to report.

20. Professional Conduct

All attorneys of record have reviewed the Guidelines for Professional Conduct in the Northern District of California.

21. Other

There are currently no other matters or considerations which may facilitate the just, speedy, and inexpensive disposition of this matter.

1 Dated: December 15, 2015

COOLEY LLP

2 MICHAEL G. RHODES (116127)

3 BRENDAN J. HUGHES (*pro hac vice*)

4 REBECCA GIVNER-FORBES (*pro hac vice*)

5
6 */s/ Brendan J. Hughes*

7 Brendan J. Hughes
8 *Counsel for Plaintiff Google Inc.*

9
10 Dated: December 15, 2015

LAW OFFICES OF BRIAN M. DAVIS

11 BRIAN M. DAVIS (SBN 241984)

12 JAMES G. HIGGINS (SBN 238188)

13
14 */s/ Brian M. Davis*

15 Brian M. Davis
16 *Counsel for Defendant Local Lighthouse Corp.*

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____

Hon. Haywood S. Gilliam, Jr.

UNITED STATES DISTRICT JUDGE

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I, Brendan J. Hughes, attest that concurrence in the filing of this document has been obtained from the other signatory. Executed on December 15, 2015 in Washington, D.C.

/s/ Brendan J. Hughes

Brendan J. Hughes
Counsel for Plaintiff Google Inc.